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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,447	12/30/2003	Raymond Liberatore	12,799	4968
7590	03/27/2006		EXAMINER	
Mr. William W. Haefliger Suite 512 201 S. Lake Ave. Pasadena, CA 91101			WALCZAK, DAVID J	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 03/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/750,447	LIBERATORE, RAYMOND	
	Examiner	Art Unit	
	David J. Walczak	3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 22 February 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-6, 16, 29, 31 and 45-74 is/are pending in the application.
- 4a) Of the above claim(s) 16, 29, 31, 47, 50, 51, 53, 56-60, 64-68 and 71 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-6, 45, 46, 48-50, 52, 54, 55, 61-63, 69, 70 and 72-74 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 30 December 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Election of Species

Applicant's election without traverse of Species I in the reply filed on 2/3/06 is acknowledged. The Applicant contends that all of the claims are readable thereon. However, claims 16, 29, 31, 47, 51, 53, 56-60, 64-68 and 71 do not read on the elected embodiment and, accordingly, will not be examined herein.

Abstract

The abstract of the disclosure (filed on 8/29/05) is objected to because phrases that can be implied, such as "is disclosed" should not be present therein. Correction is required. See MPEP § 608.01(b).

Drawings

The drawings are objected to because reference character 32a (see page 12, line 6) is not present in the drawings. Further, in Figure 2 reference character 15 is directed to the width of surface 21 and not the width of layer 13, as the specification indicates on page 11, lines 5-8). Lastly, Figure 2 contains leader lines that do not have a reference character attached thereto. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being

amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

It is here noted that the amendment to the specification filed on 8/29/05 has not been entered since the Applicant is required to reproduce the entire paragraph in which the amendment is being made while underlining the added material and lining through the material which is to be deleted.

The disclosure is objected to because of the following informalities: On page 12, lines 4 and 9, reference character 34 is used to denote two different elements, on page 13, line 22, "11a" should be --110b--, on page 15, line 20, "knife" should be --spatula-- and reference characters 87 (Figure 8) and 601 (Figure 26) are not present in the specification. Appropriate correction is required.

Claim Rejections - 35 USC § 112

Claim 73 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. The limitation that the nozzle side wall is everywhere forwardly configured toward the end opening to define forward continuity is considered to be new matter in that this limitation is broader than the structure originally disclosed in the specification and drawings.

Claims 1-6, 45, 46, 48-50, 52, 54, 55, 61-63, 69, 70 and 72-74 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claims 1 and 73, the recitation of a "spreader" (line 8 of claim 1 and line 3 of claim 73) is indefinite in that the Applicant has already referred to the device as a dispenser (line 4 of claim 1 and line 2 of claim 73), i.e., it appears that the term "spreader" is intended to define the entire device, as does the term "dispenser". Further, the specification defines the term "spreader" in two different ways (see the first paragraph on page 11), that is, as the entire device 10 and the blade 17, however, the claims seem to also use this term to define both structures, which renders the claim language confusing. In the interest of clarity, it appears that on line 8 of claim 1 and line 3 of claim 73, "a spreader having" should be deleted and on line 24 of claim 1, "the

spreader" should be --the dispenser--, i.e., such an amendment would craft the claims such that the blade 17 would be referred to in the claims as "the spreader" and the entire device would be referred to as "the dispenser".

In regard to claim 5, it appears that "spreader" should be --spreading surface--.

In regard to claims 45 and 46, it appears that "the dispenser" should be --the container--.

In regard to claims 48 and 49, "the spreader" should be --the spreading surface--.

In regard to claim 55, it is unclear as to how the spreader can overlie the serrated edge, i.e., the spreader itself defines the serrated edge and thereby cannot overlie the serrated edge.

In regard to claim 62, it appears that "a nozzle" should be --said nozzle-- since the nozzle end opening has already been defined in claim 1.

In regard to claim 72, it is unclear as to whether or not the "wide edible" is intended to be part of the claimed combination. Should the Applicant intend to claim the wide edible, an antecedent basis for the edible should be defined. Should the Applicant not intend to claim the edible, --adapted to be—language should be used when referring thereto, i.e., ---said mass layer adapted to be spread on a wide edible--.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 3751

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 45, 46, 52, 63, 72 and 73 are, as best understood, rejected under 35 U.S.C. 102(b) as being anticipated by Woods. In regard to claims 1 and 73, Woods discloses a dispenser comprised of an elongated container 1 filled with material and a nozzle 3 projecting from an end wall of the container and comprised of a sidewall that terminates in a furthest forward end opening 6 (see Figure 5) wherein the opening has height dimension that remains "substantially the same" throughout and a width dimension substantially exceeding twice the height (see Figure 6) wherein the sidewall further includes a surface which is capable of spreading the material and has an outer surface that is everywhere forwardly convergent toward the opening to define a forward taper as it approaches the opening wherein a substantially constant height layer is dispensed through the nozzle as the container is pressurized such that the layer has the width of the end opening and the forward taper acts to terminally narrow the nozzle and configure it for ease of wide spreading the dispensed layer in relation to narrowed layer thickness. It is noted that statements of intended use, i.e., the labeling of the dispenser an "edible material mass progressive dispenser", does not lend any patentable structure to the claims. Further, the Woods reference is capable of dispensing an edible mass should a user so choose to employ the device. In regard to claims 2 and 3, the spreader surface (area 8, for example) is in the form of a blade and attached to the dispenser proximate the nozzle. In regard to claim 4, blade is flexible (see column 1, line 7). In regard to claim 5, the nozzle is carried by the dispenser and edible material (toothpaste is considered an edible material, see column 1, line 1) is in

the dispenser and is able to be spread by the spreading surface. In regard to claim 6, the nozzle is flexible (see column 1, line 7). In regard to claims 45 and 45, the nozzle is threadedly attached to the dispenser (see Figure 3). In regard to claim 52, the nozzle and spreader surface are “configured and positioned to maximize the visibility” of the dispensed material. In regard to claim 63, since the nozzle is made from flexible material, when the nozzle is used to dispense material onto a curved surface, the spreader surface will form a curvature that will conform to the curved surface. It is again noted that statements of intended use, i.e, “to confirm to an edible” curved surface do not lend any patentable structure to the claims. In regard to claim 71, the nozzle has the shape of a spatula. In regard to claim 72, the mass layer is spread as a wide layer.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 61, 62, 69, 70 and 74 are, as best understood, rejected under 35 U.S.C. 103(a) as being unpatentable over Woods in view of Hertz. Although the Woods device does not include a cap over the nozzle, attention is directed to the Hertz reference, which discloses an analogous dispenser wherein a cap 39 which engages the nozzle (see Figure 8) and which has an interior cavity “generally in the shape of the nozzle” and a configuration “to conform to the nozzle and the opening” is placed over the nozzle

in order to enable the nozzle to be covered when not in use. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made that such a cover can be employed onto the Woods device (and engaged to the device in any suitable, well-known manner, including a snap-ring engagement) in order to enable the nozzle in the Wood device to be covered when not in use.

Claims 48, 49, 54 and 55 are, as best understood, rejected under 35 U.S.C. 103(a) as being unpatentable over Woods in view of Knapp. Although the Woods device does not include a serrated edge thereon, attention is directed to the Knapp reference, which discloses another dispenser wherein a serrated edge is formed thereon in order to enable the product to be better spread. Accordingly, since both the Woods and Knapp references do not limit the type of spreadable material that can be dispensed therefrom, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include such a serrated edge onto the Woods device in order to enable a user to better spread the material.

Claim 50 is, as best understood, rejected under 35 U.S.C. 103(a) as being unpatentable over Woods. Although the opening in the Woods device is not undulated, it is the Examiner's position that the opening in the Woods device can be of any suitable shape, depending on the needs of the user, without effecting the overall operation of the device.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David J. Walczak
Primary Examiner
Art Unit 3751

DJW
3/22/06